

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MAN BOK WON and
ZOO YOUNG WON,
Husband and Wife,

Plaintiffs,

vs.

No. CIV 08-0985 JB/LAM

CITY OF ALAMOGORDO;
ARTHUR ALTERSON, and
LORA NELSON,
In their official and individual capacities,

Defendants.

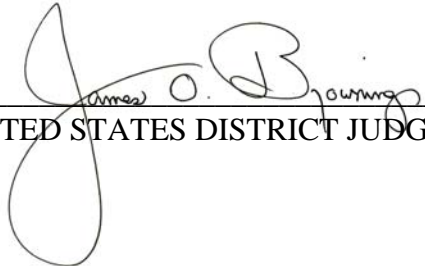
ORDER

THIS MATTER comes before the Court on the Defendants' Motion for Summary Judgment and Motion for Fees and Costs, filed December 18, 2008 (Doc. 17). The primary issues are: (i) whether the Court should dismiss Plaintiffs Man Bok Won and Zoo Young Won's Complaint because their claims have previously been adjudicated on the merits; and (ii) whether the Defendants are entitled to recover their costs and fees from the Wons for filing this allegedly frivolous lawsuit. Because the Wons admit that a majority of their claims have been adjudicated on the merits, and because the Wons contend that they intend to amend the Complaint to advance only the claim for condemnation under the law of the State of New Mexico, the Court will grant the motion in part. The Court will dismiss all claims in the Complaint. As to the Wons' condemnation claim, which appears to be the Wons' Governmental Taking claim in Count II, the Court will continue to dismiss it without prejudice. The Wons do not contend that they have availed themselves of state remedies to obtain just compensation since the Court resolved Won v. City of Alamogordo, Order, No. CIV

06-1220 WPL/KMR, filed September 11, 2007 (Doc. 47) and before filing this federal case. Accordingly, the Court continues to lack jurisdiction over that claim.

While the Wons should not have filed the same Complaint again in federal court, they are proceeding *pro se*, and this area of law is difficult. It may be that the dismissal of some of the claims in the first case without prejudice led the Wons to believe they could file their claims again. The Court will not penalize the Wons with fees and costs, but cautions that they should not refile their Government Taking claim in federal court without addressing the reasons that this claim is not ripe.

IT IS ORDERED that Defendants Motion for Summary Judgment and Motion for Fees and Costs is granted in part and denied in part. The Court will dismiss all of the Plaintiffs' claims. Claims I and II will be dismissed without prejudice. The request for fees and costs is denied.


UNITED STATES DISTRICT JUDGE

Counsel:

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Pro se Plaintiffs

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